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RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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9 WARNER BROS. RECORDS INC.; SONY
10 BMG MUSIC ENTERTAINMENT; and
11 ARISTA RECORDS LLC

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 WARNER BROS. RECORDS INC., a Delaware
15 corporation; SONY BMG MUSIC
16 ENTERTAINMENT, a Delaware general
17 partnership; and ARISTA RECORDS LLC, a
18 Delaware limited liability company,

19 Plaintiffs,

20 v.

21 GREGORY COLE,

22 Defendant.

Case No. C 06 6754

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

3. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendant resides in this District, and the acts of infringement complained of herein originated in this District.

PARTIES

4. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

5. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

6. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

7. Plaintiffs are informed and believe that Defendant is an individual residing in this District.

COUNT I

INFRINGEMENT OF COPYRIGHTS

8. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

9. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright with respect to certain copyrighted sound recordings (the "Copyrighted Recordings"). The Copyrighted Recordings include but are not limited to each of the copyrighted sound recordings identified in Exhibit A attached hereto, each of which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights. In addition to the sound recordings listed on Exhibit A, Copyrighted Recordings also include certain of the sound

1 recordings listed on Exhibit B which are owned by or exclusively licensed to one or more of the
2 Plaintiffs or Plaintiffs' affiliate record labels, and which are subject to valid Certificates of Copyright
3 Registration issued by the Register of Copyrights.

4 10. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the
5 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings
6 to the public.

7 11. Plaintiffs are informed and believe that Defendant, without the permission or consent of
8 Plaintiffs, has used, and continues to use, an online media distribution system to download the
9 Copyrighted Recordings, to distribute the Copyrighted Recordings to the public, and/or to make the
10 Copyrighted Recordings available for distribution to others. In doing so, Defendant has violated
11 Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute
12 infringement of Plaintiffs' copyrights and exclusive rights under copyright.

13 12. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each
14 respective album cover of each of the sound recordings identified in Exhibit A. These notices of
15 copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These
16 published copies were widely available, and each of the published copies of the sound recordings
17 identified in Exhibit A was accessible by Defendant.

18 13. Plaintiffs are informed and believe that the foregoing acts of infringement have been
19 willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.

20 14. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
21 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for
22 Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their
23 attorneys' fees and costs pursuant to 17 U.S.C. § 505.

24 15. The conduct of Defendant is causing and, unless enjoined and restrained by this Court,
25 will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or
26 measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and
27 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs'
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1 copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of
2 Plaintiffs' exclusive rights.

3 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

4 1. For an injunction providing:

5 "Defendant shall be and hereby is enjoined from directly or indirectly
6 infringing Plaintiffs' rights under federal or state law in the Copyrighted
7 Recordings and any sound recording, whether now in existence or later
8 created, that is owned or controlled by Plaintiffs (or any parent,
9 subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs'
10 Recordings"), including without limitation by using the Internet or any
11 online media distribution system to reproduce (i.e., download) any of
12 Plaintiffs' Recordings, to distribute (i.e., upload) any of Plaintiffs'
13 Recordings, or to make any of Plaintiffs' Recordings available for
14 distribution to the public, except pursuant to a lawful license or with the
15 express authority of Plaintiffs. Defendant also shall destroy all copies of
16 Plaintiffs' Recordings that Defendant has downloaded onto any
17 computer hard drive or server without Plaintiffs' authorization and shall
18 destroy all copies of those downloaded recordings transferred onto any
19 physical medium or device in Defendant's possession, custody, or
20 control."

21 2. For statutory damages for each infringement of each Copyrighted Recording
22 pursuant to 17 U.S.C. Section 504.

23 3. For Plaintiffs' costs in this action.

24 4. For Plaintiffs' reasonable attorneys' fees incurred herein.

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2 5. For such other and further relief as the Court may deem just and proper.
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4 Dated: October 31, 2006

HOLME ROBERTS & OWEN LLP

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6 By


THOMAS M. KERR

Attorney for Plaintiffs

7 WARNER BROS. RECORDS INC.; SONY BMG
8 MUSIC ENTERTAINMENT; and ARISTA
9 RECORDS LLC
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EXHIBIT A

EXHIBIT A**GREGORY COLE**

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	Boney James & Rick Braun	R.S.V.P.	Shake It Up	281-990
Warner Bros. Records Inc.	Kirk Whalum	Now 'Til Forever	Unconditional	288-401
SONY BMG MUSIC ENTERTAINMENT	Mariah Carey	Close My Eyes	Butterfly	244-014
SONY BMG MUSIC ENTERTAINMENT	Michael Jackson	Rock With You	Off The Wall	11-120
SONY BMG MUSIC ENTERTAINMENT	Michael Jackson	Billie Jean	Thriller	41-965
Arista Records LLC	Kenny G	Over The Rainbow	Classics In The Key Of G	289-898
Arista Records LLC	Kenny G	Don't Make Me Wait For Love	Duotones	79-028
Arista Records LLC	Kenny G	Baby G	Kenny G Greatest Hits	263-707
Arista Records LLC	Kenny G	Havana	The Moment	236-228